IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18-09-2008

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.2353 of 2001

R.Palanisamy .. Petitioner.

Versus

The Management of Cambodia Mills
A Unit of NTC (TN &P) Ltd., represented by
its General Manager, P.O.Box.No.3504,
Ondiputhur, Coimbatore-641 016. .. respondent

Prayer: This petition has been filed seeking for a writ of Certiorarified Mandamus calling for the records pertaining to the impugned order, dated 18.12.2000, and quash the same and further directing the respondent to reinstate the petitioner in service.

For Petitioner : No Appearance

For Respondent : Mr.R.Parthiban

O R D E R

Heard the learned counsel appearing for the respondent.

2. This writ petition has been filed by the petitioner to call for the records relating to the impugned order, dated 18.12.2000, and to quash the same and to direct the respondent to reinstate the petitioner in the post in which he had been employed.

3. It has been stated that the respondent Mills is a unit of National Textiles Corporation (TN & P) Limited, which is a Central Government Undertaking. It is an authority, under Article 12 of the Constitution of India.

4. The petitioner has further stated that he is a physically handicapped person. Under the scheme framed by the Government of India for the rehabilitation of handicapped persons in public sector undertakings, the petitioner had been recruited as an apprentice in the respondent Mills, on 27.8.1991. After the completion of one year of apprenticeship, he was appointed as a helper in the cone winding department, on a permanent basis. Later, he was promoted as a Cone Packer in the year, 1984. His last drawn salary was Rs.4,769/- per month. While so, on 9.8.2000, after completing his day shift, he had come out through the spinning gate at about 4. p.m. One Amirthalingam, who was a watchman on duty, had thoroughly checked the belongings of the petitioner and he had

allowed the petitioner to exit. After coming out of the spinning gate, the petitioner had received an intimation from the time office that a visitor was waiting for him near the main gate. Immediately, the petitioner had left for the main gate after leaving his plastic wire bag, containing his tiffin carrier, near the watchman's cabin, which was located outside the spinning gate.

5. The petitioner has further stated that on reaching the main gate, the petitioner was informed by the personnel of the time office that the visitor was waiting for some one else with the same name as that of the petitioner and he was working in the blow room department. The petitioner had gone to the vehicle stand to take his scooter and to come back to the watchman cabin to take his bag containing his tiffin carrier. At that time one Manoharan, who was the watchman, had asked the petitioner to open the scooter box for checking. After checking the scooter box, he had wanted to check the wire bag of the petitioner. While checking the bag belonging to the petitioner, the watchman had found a leather apron worth Rs.1.50 and he had reported to the personnel officer, without seeking any explanation from the petitioner. The personnel officer, did not accept the explanation given by the petitioner. However, he had persuaded the petitioner to give a letter, as desired by him. Thereafter, on 10.8.2000, the respondent Mills had issued a show cause notice cum suspension order to the petitioner calling for an explanation. After receiving the show cause notice, the petitioner had made a representation, on 10.8.2000, seeking a copy of the complaint, the standing orders and the letter executed by the petitioner, on 9.8.2000. After receiving the representation, a copy of the complaint given by watchman Monaharan and a letter, dated 9.8.2000, executed by the petitioner, had been given to him. However, the copy of the standing orders was not given to him. Thereafter, the petitioner had submitted a detailed explanation, dated 13.9.2000, denying the allegations levelled against him. He had stated that the charges against the petitioner were vague in nature and that the respondent had pre-decided the issue, without looking into the explanation submitted by the petitioner. Thereafter, the respondent had initiated a domestic enquiry, which had commenced, on 20.10.2000.

6. The petitioner has further stated that the enquiry officer, without considering the representation of the petitioner seeking permission for a representative to putforth his case and without giving him the copies of the enquiry proceedings, had completed the enquiry. Even though the petitioner was under severe economic hardship, due to the non-payment of subsistence allowance, he had participated in the enquiry. However, he could not effectively defend himself due to the economic stress and the mental agony he was facing. However, the enquiry officer, after completion of the enquiry, had submitted a report holding that the petitioner was guilty of the charges. The enquiry report was furnished to him, along with the show cause notice. After receiving the second show cause notice, along with the enquiry report, the petitioner had made a representation to the respondent seeking for the Tamil version of the enquiry report. However, the respondent had refused to furnish the petitioner the Tamil version of the enquiry report. Therefore, the petitioner could not submit an effective reply to the second show cause notice. Thereafter, the impugned order, dated 18.12.2000, had been passed demoting the petitioner from the post of cone packer to a badli. In such circumstances, the petitioner has preferred the present writ petition, under Article 226 of the Constitution of India.

7. In the counter affidavit filed on behalf of the respondent, the averments made by the petitioner had been denied. It has been stated that the petitioner was working as cone packing worker. On 9.8.2000, when the petitioner was subjected to a security check by the watchman Manoharan, a new leather apron belonging to the Mills was found in his lunch bag. Immediately thereafter, he was brought to the personnel office/time office, where he had confessed about the incident, in writing. However, the petitioner was given a charge memo and he was suspended from duty, as per the procedure. Pending enquiry, the charge memo was issued to him, on 10.8.2000 and he was asked to

submit his explanation. In his reply, dated 13.9.2000, the petitioner had denied the allegations. Therefore, an enquiry was conducted by an independent officer. The delinquent employee had participated in the enquiry and he was given sufficient opportunity to defend his case. On the completion of the enquiry, the enquiry officer had given his findings holding that the charge against the petitioner were proved. A second show cause notice, dated 29.11.2000, had been issued to the delinquent employee proposing the punishment of dismissal from service. In his reply, the petitioner had denied the incidents and he had accused all the officials of the respondent Mills including the enquiry officer, without any valid reason. In order to give the petitioner an opportunity to redeem himself, the management of the respondent Mills had decided to demote him as a badli worker by an order, dated 18.12.2000, instead of dismissing him from service. On the completion of the disciplinary proceedings, the delinquent employee was asked to join for work. However, he had remained absent. The petitioner had also been informed that his absence would amount to misconduct and that he will be liable for further proceedings. The balance amount due to him, as subsistence allowance, was not received by the petitioner.

8. It has also been stated that, according to the standing orders, the next lower cadre to a permanent workman is that of badli. Therefore, the petitioner was demoted as a badli. It has also been stated that the petitioner had tried various methods to delay the enquiry proceedings raising various untenable grounds. As the enquiry conducted against the petitioner was in accordance with the established procedures and the principles of natural justice, there is no justification for the petitioner to challenge the same. Even though the petitioner had been demoted, he would be getting the same monetary benefits as that of permanent workers. After the order, dated 18.12.2000, had been passed by the respondent, demoting the petitioner from the post of cone backing worker to that of badli, he did not attend to his work. In such circumstances, the writ petition filed by the petitioner deserves to be dismissed.

9. The learned counsel appearing for the petitioner had submitted that the impugned order passed by the respondent is not sustainable, either in law or on facts. The enquiry officer had conducted himself in a biased manner right from the inception of the enquiry. The refusal of the enquiry officer to permit the petitioner to have the defense assistant had caused serious prejudice to the petitioner. The respondent ought to have furnished the enquiry report to the petitioner before provisionally coming to the conclusion that the petitioner was guilty of the alleged misconduct. Instead, the respondent had furnished the enquiry report to the petitioner only along with the second show cause notice. The charges levelled against the petitioner were vague and baseless. The enquiry officer had failed to take into consideration the categorical admissions made by the prosecution witnesses that all the employees would be subjected to a thorough checking before they left the spinning gate. The enquiry officer ought to have drawn an adverse inference, since the management had not examined the Watchman Amirthalingam, who had checked the petitioner before he had left the main gate. Further, the material, alleged to have been found in the bag belonging to the petitioner, is of a very low value and it is not useful to the petitioner for any purpose. The enquiry conducted by the enquiry officer, without giving sufficient opportunity to the petitioner and without giving the necessary records, is vitiated. Further, the standing orders applicable to the respondent Mills categorically provide that a badli is only a substitute worker, having no lien on the employment. Therefore, the impugned order passed by the respondent is without jurisdiction.

10. The learned counsel appearing for the respondent Mills had submitted that the petitioner had committed a serious misconduct by being in possession of a leather apron belonging to the respondent Mills. Inspite of sufficient opportunity being given to the petitioner, he could not show that he was innocent. By his own confession he had admitted the guilt. The enquiry officer had conducted the enquiry, in accordance with the established rules applicable to the case and by following the principles of natural justice. After the conclusion of the enquiry, the enquiry report had

been given to the petitioner. A show cause notice had also been issued to him to submit his explanation. Since the explanation submitted by the petitioner was not satisfactory, the respondent had passed the impugned order. In fact, considering the gravity of the offence committed by the petitioner, it was decided to dismiss the petitioner from service. However, in order to give him another chance to redeem himself, he was given the lesser punishment of demotion from the post of cone packing worker to that of badli. Since there is no monetary reduction to the petitioner due to the demotion, he cannot be seriously prejudiced. Further, the standing orders of the respondent Mills recognises the categories of badli and apprentice, apart from the permanent workers. In such circumstances, there is no defect in the order of demotion passed against the petitioner by the respondent Mills.

11. In view of the submissions made by the learned counsels appearing for the petitioner, as well as for the respondent and on a perusal of the records available before this Court, it is seen that the respondent had levelled certain charges against the petitioner for misconduct alleged to have been committed by him. According to the respondent, the petitioner was found to be in possession of a leather apron belonging to the respondent. The enquiry had been conducted based on the charges levelled against the petitioner. Even though the petitioner had submitted his explanation, he was found guilty of the charges, based on which he was demoted from the post of cone packing worker to that of badli. Various grounds had been raised by the petitioner stating that he was not guilt of the charges levelled against him. He had also stated that the enquiry proceedings had been vitiated and that the order of demotion imposed on him is without jurisdiction. The main contention raised on behalf of the petitioner is that the respondent do not have the authority or jurisdiction to pass the impugned order, dated 18.12.2000, demoting the petitioner from a cone packing worker to that of badli. Even though it was submitted on behalf of the respondent that the standing orders applicable to the respondent Mills recognised badli as one of the categories of workmen, it has not been shown by the respondent Mills that it is legally permissible for the respondent Mills to demote a permanent worker as a badli. Even though it is contended by the respondent that there is no monetary reduction for the petitioner due to the demotion, it could not be shown that the standing orders contemplated imposition of such a punishment on a permanent worker employed in the respondent Mills. A learned Judge of this Court, in an order, dated 8.2.2007, made in W.P.No.39870 of 2005, had held, while dealing with a similar issue, that the word demotion can only mean bringing down of a person from the higher post to that of lower post. It cannot include conferring a status of a badli which means a substitute of a permanent workman. Since such a position is not contemplated by law, the impugned order in the present writ petition, demoting the petitioner from the post of cone packing worker to that of badli, is set aside. Since it is found that the respondent Mills did not intend to dismiss the petitioner from service, as he was given a chance to redeem himself, it is open to the respondent to impose any other punishment upon the petitioner, except removal or dismissal from service, in accordance with law.

12. Accordingly, the impugned order, dated 18.12.2000, is set aside and the writ petition stands allowed to the extent noted above. No costs.

lan

To:

The General Manager,
The Management of Cambodia Mills
A Unit of NTC (TN &P) Ltd.,
P.O.Box.No.3504,
Ondiputhur,
Coimbatore 641 016